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CYBERsitter, LLC d/b/a Solid Oak Software

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

CYBERSITTER, LLC, a California limited liability company, d/b/a Solid Oak Software,

CASE NO. CV 10-00038 JST(SHx)

Plaintiff,

V.

The People's Republic of China, a foreign state; Zhengzhou Jinhui Computer System Engineering Ltd., a Chinese corporation; Beijing Dazheng Human Language Technology Academy Ltd., a Chinese corporation; Sony Corporation, a Japanese corporation; Lenovo Group Limited, a Chinese corporation; Toshiba Corporation, a Japanese corporation; ACER Incorporated, a Taiwanese corporation; ASUSTeK Computer Inc., a Taiwanese corporation; BenQ Corporation, a Taiwanese corporation; Haier Group Corporation, a Chinese corporation; DOES 1-10, inclusive,

JOINT RULE 26(F) REPORT

Judge: Hon. Josephine Staton Tucker
Ctrm: 10A

Scheduling Conf. Date: Dec. 6, 2010
Hearing Time: 1:30 p.m.

Discovery Cutoff: None Set
Pretrial Conference: None Set
Trial Date: None Set

Defendants.

1 Pursuant to Federal Rule of Civil Procedure 26(f), Central District of California
2 Local Rule 26-1, and this Court's September 7, 2010 Order Setting Scheduling
3 Conference, plaintiff CYBERSitter, LLC d/b/a Solid Oak Software ("Plaintiff") and
4 defendants Sony Corporation ("Sony"), ACER Incorporated ("Acer"), ASUSTeK
5 Computer Inc. ("Asus") and BenQ Corporation ("BenQ") (collectively, "Defendants")
6 met and conferred on November 15, 2010, and hereby submit this Joint Report.

7 **a) Statement of the Case**

8 Plaintiff's Statement:

9 Plaintiff asserts claims for misappropriation of trade secrets, copyright
10 infringement, unfair competition, and civil conspiracy against ten defendants,
11 including the People's Republic of China ("PRC"), two Chinese software developers
12 (*viz.*, defendants Jinhui and Dazheng), and seven computer manufacturers. Plaintiff
13 alleges that the developers of the Green Dam censorware program misappropriated
14 approximately 3,000 lines of code from Plaintiff's internet filtering program,
15 CYBERSitter – including the heart of the program, the CYBERSitter content filters.
16 Plaintiff further alleges that the defendant computer manufacturers distributed over 50
17 million illegal copies of the censorware program with their computers, and in so
18 doing, willingly participated with the PRC and defendant software developers in an
19 illegal scheme to misappropriate Plaintiff's intellectual property. Plaintiff alleges that
20 each of the defendant computer manufacturers continued to distribute millions of
21 copies of the illegal program even after the illegal nature of the program became well-
22 known and long after the PRC had withdrawn its announced mandate regarding the
23 program – indeed, the PRC's Green Dam mandate was withdrawn before it was ever
24 implemented.

25 The appearing Defendants have filed answers denying the majority (but not all)
26 of Plaintiff's allegations and asserting various affirmative defenses, including, *inter*
27 *alia*, that Plaintiff's Complaint fails to state a claim, that Defendants were acting at the
28 direction of a foreign sovereign, that Defendants' actions were authorized by Plaintiff

1 or constituted fair use, lack of personal jurisdiction, and various other equitable and
2 legal defenses. The remaining Defendants have not yet responded to the Complaint
3 and are either in the process of being served or have been served.

4 None of the appearing Defendants has asserted any counterclaims herein.

5 Defendant Sony Corporation's Statement:

6 This case arises from Plaintiff's allegations that two Chinese software
7 developers, acting in cooperation with the People's Republic of China ("PRC"),
8 infringed Plaintiffs' copyright in its computer software program "CYBERsitter" by
9 using portions of CYBERsitter in a Chinese software filtering program known as the
10 "Green Dam Youth Escort" ("Green Dam"). On or about May 19, 2009, the Ministry
11 of Industry and Information Technology ("MIIT") of the PRC issued a mandate
12 requiring that as of July 1, 2009, all personal computers sold in China be pre-installed
13 or packaged with Green Dam (the "Green Dam Mandate").

14 Sony Corporation had nothing to do with, and did not develop or participate in
15 the development of Green Dam. Instead, the entirety of Plaintiff's claims against Sony
16 Corporation (and a number of other foreign computer manufacturers) arises from its
17 claim that Sony Corporation complied with the Green Dam Mandate and sold
18 computers in China that were pre-installed or packaged with Green Dam. Plaintiff
19 alleges that such conduct violated the copyright laws of China and Japan, and
20 constituted a misappropriation of Plaintiff's trade secrets.

21 All of Plaintiff's claims are legally and factually meritless, and Plaintiff is not
22 entitled to any damages from Sony Corporation.

23 **First**, Sony Corporation has no place in this lawsuit. In addition to the fact that
24 Sony Corporation did not develop (or participate in developing) Green Dam, Sony
25 Corporation does not distribute or sell any PCs in China, including the PCs at issue in
26 this action. Rather, the distribution and sale of Sony PCs in China is overseen and
27 undertaken by a separate legal entity, Sony (China) Limited ("Sony China"). Sony
28

1 Corporation has informed Plaintiff that Plaintiff has sued the wrong entity, but
2 Plaintiff refuses to dismiss Sony Corporation.

3 **Second**, Plaintiff cannot prevail on its claims. Among other things, to the
4 extent that any VAIO computers were sold in China (by Sony China) with Green Dam
5 preinstalled, and to the extent that any claims could lie against Sony Corporation for
6 the conduct of non-party Sony China, such conduct was undertaken as required by the
7 Green Dam Mandate, and thus did not violate Chinese or Japanese copyright laws
8 (plaintiff did not sue Sony Corporation under the U.S. copyright laws). Likewise,
9 Sony Corporation cannot be liable for misappropriation of trade secrets based solely
10 on its alleged distribution of computer software that it did not develop.

11 **Third**, even if there were some basis for liability, Plaintiff is not entitled to even
12 a fraction of the damages it seeks. Because Plaintiff does not distribute its products in
13 China, it has no basis to seek lost licensing fees. In any event, it is unlikely that any
14 purported actual damages are significant, including because Green Dam had no
15 market value in China and would not have been purchased by any Chinese consumer.

16 Defendant BenQ's Statement:

17 Plaintiff alleges claims for Misappropriation of Trade Secrets (violation of
18 California Civil Code section 3426.1), Unfair Competition (violation of California
19 Business and Professions Code sections 17200 et seq. and 18 U.S.C. sections 1831,
20 1832), Copyright Infringement under the laws of the United States, People's Republic
21 of China, Japan, and Taiwan, and Civil Conspiracy, all premised upon alleged
22 software piracy. Plaintiff seeks more than \$2.2 billion in damages.

23 BenQ denies all liability, and asserts a number of affirmative defenses,
24 including but not limited to those stemming from the fact that Plaintiff has named the
25 wrong BenQ entity as a defendant, this Court does not have subject matter jurisdiction
26 over this action, Plaintiff's claims are not premised upon proper trade secrets, and that
27 Plaintiff's claims are barred by preemption and the Foreign Sovereign Immunities Act,
28 among other things.

1 Defendant Acer's Statement:

2 This case arises from Plaintiff's allegations that two Chinese software
3 developers, acting in cooperation with the People's Republic of China ("PRC"),
4 infringed Plaintiffs' copyright in its computer software program "CYBERSitter" by
5 using portions of CYBERSitter in a Chinese software filtering program known as the
6 "Green Dam Youth Escort" ("Green Dam"). On or about May 19, 2009, the Ministry
7 of Industry and Information Technology ("MIIT") of the PRC issued a mandate
8 requiring that as of July 1, 2009, all personal computers sold in China be pre-installed
9 or packaged with Green Dam (the "Green Dam Mandate").

10 Acer did not develop or participate in, and had nothing to do with, the
11 development of Green Dam or the institution of the Green Dam Mandate. Instead, the
12 entirety of Plaintiff's claims against Acer (and a number of other foreign computer
13 manufacturers) arises from its claim that Acer supposedly infringed plaintiff's
14 copyright in the CYBERSitter software by complying with the Green Dam Mandate
15 and selling computers in China that were pre-installed or packaged with Green Dam in
16 compliance with the Green Dam Mandate. Plaintiff alleges that such conduct violated
17 the copyright law of China and Taiwan, and constituted a misappropriation of
18 Plaintiff's trade secrets. Plainly, Acer is minor player in this matter. Indeed,
19 Plaintiff's President, Brian Milburn, has publicly acknowledged that the computer
20 companies that distributed Green Dam (i.e. Acer) "are not really the bad guys here."
21 [As quoted in June 16, 2009 article on PCmag.com entitled "Solid Oak Asks Dell, HP
22 to stop 'Green Dam' Shipments"].

23 Plaintiff cannot prevail on its claims, and certainly not as to Acer. Among other
24 things, to the extent that any Acer computers were sold in China with Green Dam
25 preinstalled, such conduct was undertaken as required by the Green Dam Mandate,
26 and thus did not violate Chinese and Taiwanese copyright laws. Likewise, as a matter
27 of law Acer cannot be liable for misappropriation of trade secrets based solely on its
28 alleged distribution of computer software that it did not develop.

1 Additionally, even if there were some basis for liability, Plaintiff is not entitled
2 to even a fraction of the damages it seeks. Plaintiff's damages claim seems more
3 intended to grab headlines than based in reality. Because Plaintiff does not distribute
4 its products in China, it has no basis to seek lost licensing fees and, in any event, it is
5 unlikely that there are any actual damages to Plaintiff, because among other reasons,
6 Green Dam had no market value in China and would not have been purchased by any
7 Chinese consumer.

8 Finally, Acer asserts a number of affirmative defenses, including failure to state
9 a claim and preemption under the Foreign Sovereign Immunities Act, among other
10 things.

11 Defendant Asus's Statement:

12 Asus denies all liability, and asserts a number of affirmative defenses, including
13 lack of subject matter jurisdiction over this action, failure to state a claim of trade
14 secret misappropriate, and preemption and the Foreign Sovereign Immunities Act,
15 among other things.

16 **b) Legal Issues**

17 Plaintiff's Statement:

18 The key legal issues in this case include: (1) whether Plaintiff's software was
19 copied without authorization into the Green Dam program; (2) whether Defendants
20 and/or their agents, affiliates or subsidiaries copied and/or distributed copies of
21 Plaintiff's program; (3) whether Defendants participated in a conspiracy to
22 misappropriate Plaintiff's intellectual property; (4) whether Defendants are directly
23 liable for infringement of Plaintiff's IP; (5) whether Defendants may be held liable for
24 the infringing acts of their agents, affiliates or subsidiaries; and (6) whether the
25 appropriate measure of damages is Defendants' profits, Plaintiff's losses (*see FAC ¶*
26 27, noting that Plaintiff's customers include "thousands of businesses, individuals, and
27 schools in China, and thousands more in other Chinese-speaking countries"), a
28 reasonable license fee, or some combination thereof.

1 Apart from issues related to overseas discovery (addressed below), Plaintiff is
2 unaware of any unusual substantive, procedural, or evidentiary issues to be addressed
3 at this time.

4 Statement of Defendant Sony Corporation:

5 This is a highly unusual case, both procedurally and substantively. Assuming
6 Sony Corporation remains in the case, this action would involve the application of the
7 laws of four countries (China, Taiwan, Japan and the United States) and would raise
8 questions under those laws of sovereign immunity and international comity. With
9 respect to each of the laws of China, Taiwan and Japan, the parties would need to
10 obtain legal experts specializing in those countries' conflicts of law, copyright and/or
11 trade secrets laws.

12 Among the issues to be decided are:

- 13 • Whether Sony Corporation can be liable for the acts of non-party Sony
14 China under Chinese or Japanese copyright law, or under California Trade Secrets
15 law;
- 16 • Whether a finding of infringement under Chinese or Japanese copyright
17 law or California Trade Secrets law can be based solely on conduct undertaken in
18 compliance with the Green Dam Mandate issued by the MIIT of the PRC;
- 19 • Whether Plaintiff's claims are barred under the doctrines of sovereign
20 immunity or sovereign compulsion under Japanese and Chinese law.
- 21 • Whether Plaintiff is entitled to any actual damages under Chinese or
22 Japanese copyright law or California Trade Secrets law, and, if so, the amount of such
23 damages, including the proper apportionment of damages under Chinese and Japanese
24 copyright law between the allegedly infringing and indisputably non-infringing
25 portions of Green Dam.

26 The evidentiary issues also are extremely unusual, and will involve extensive
27 international discovery, including discovery on the PRC and its representatives. As
28 discussed below, obtaining discovery will be complicated, difficult, and time

1 consuming. Discovery imperative to proving Sony Corporation's defenses will need
2 to be obtained from third parties through the Hague Convention, and to a lesser extent,
3 by using Letters Rogatory. The parties will be required to travel to multiple foreign
4 jurisdictions to take (and defend) discovery in this case. In the event the case is tried,
5 Sony Corporation will be required to transport witnesses from overseas to Los
6 Angeles, and to obtain any necessary visas.

7 Defendant BenQ's Statement:

8 As Plaintiff has been informed and provided evidence of, Plaintiff has sued the
9 incorrect BenQ entity. Accordingly, BenQ plans to move for summary judgment on
10 this issue at the earliest possible opportunity. Additionally, if BenQ remains as a
11 defendant in this case, BenQ plans to file an appropriate dispositive motion
12 challenging this Court's subject matter jurisdiction under the Foreign Sovereign
13 Immunities Act.

14 Defendant Acer's Statement:

15 This action involves the application of the laws of four countries, and raises
16 issues regarding the laws of foreign sovereign immunity in each of those countries.
17 With respect to each of the laws of China, Taiwan and Japan, the parties would need
18 to obtain legal experts specializing in those countries' conflicts of law, copyright
19 and/or trade secrets laws.

20 Among the issues to be decided are:

- 21 ● Whether Acer can be liable for infringement under Chinese or Taiwanese
22 copyright law or California Trade Secrets law based solely on conduct undertaken in
23 compliance with the Green Dam Mandate, issued by the MIIT of the PRC;
- 24 ● Whether Plaintiff's claims are barred under the doctrines of sovereign
25 immunity or sovereign compulsion under Taiwan and Chinese law; and
- 26 ● Whether Plaintiff is entitled to any damages under Chinese or Taiwan
27 copyright law or California Trade Secrets law, and, if so, the amount of such damages.

28 Defendant Asus's Statement:

In the event that this case proceeds substantively, it will involve the application of the laws of four countries (China, Taiwan, Japan and the United States) and raise issues of sovereign immunity and international comity. With respect to each of the laws of China, Taiwan and Japan, the parties will need to obtain legal experts specializing in those countries' conflicts of law, copyright, and/or trade secrets laws.

Among the issues to be decided are:

• Whether Asus can be liable alleged infringement under Chinese or Taiwanese copyright law or California Trade Secret law based solely on conduct undertaken in compliance with the Green Dam Mandate, issued by the MIIT of the PRC;

• Whether Plaintiff's claims are barred under the doctrines of sovereign immunity or sovereign compulsion under Taiwanese or Chinese law;

• Whether Plaintiff is entitled to any actual damages under Chinese or Taiwanese copyright law or California Trade Secrets law, and, if so, the amount of such damages;

The evidentiary issues also are extremely unusual, and will involve extensive international discovery, including discovery on the PRC and its representatives. As discussed below, obtaining discovery will be complicated, difficult, and time consuming. Discovery imperative to proving Asus's defenses will need to be obtained from third parties through the Hague Convention, and to a lesser extent, by using Letters Rogatory. The parties will be required to travel to multiple foreign jurisdictions to take (and defend) discovery in this case. In the event the case is tried, Asus will be required to transport witnesses from overseas to Los Angeles.

c) **Damages**

Plaintiff's Statement:

Plaintiff estimates the reasonable range of provable damages to be between \$6.2 million and \$2.25 billion. The former is the amount that the Chinese government paid the Green Dam developers (*viz.*, defendants Jinhui and Dazheng) for a one-year

1 license to use and distribute the Green Dam software, the heart of which was copied
2 from the CYBERsitter program. The latter, as stated in the Complaint, represents the
3 Chinese government's stated figures of more than 56.5 million unlicensed copies
4 distributed on computers, in schools, and on the Internet (as of early June 2009)
5 multiplied by \$39.95 per copy.

6 Defendant Sony Corporation's Statement:

7 Even assuming Plaintiff is entitled to damages, which Sony Corporation denies,
8 any damages analysis would need to be assessed by experts in Chinese licensing and
9 copyright infringement. Additionally, any damages analysis must take into
10 consideration issues of apportionment between the allegedly infringing and non-
11 infringing portions of CYBERsitter, the fact that few, if any, Chinese consumers
12 likely would have purchased Green Dam at retail (and certainly not at the market
13 value of the CYBERsitter software for the United States market), and the fact that
14 Plaintiff has no track record of sales or licensing of its product in China, and has never
15 entered or contemplated entering the Chinese market.

16 Defendant BenQ's Statement:

17 BenQ denies that it has caused any damages to Plaintiff, and thus does not
18 believe any range of damages is provable against it.

19 Defendant Acer's Statement:

20 For the reasons discussed above, Acer believes that Plaintiff will not be able to
21 prove liability by Acer, so the issue of damages will not be reached as to it. Even if
22 Plaintiff were able to prove liability as to Acer, it will not be able to prove that it is
23 entitled to any amount of damages as to Acer for the reasons discussed above. It is
24 anticipated that Plaintiff's damages claim will require analysis under, and expert
25 testimony as to, Chinese law on licensing and copyright infringement.

26 Defendant Asus's Statement:

27 Asus denies that it has caused any damages to Plaintiff, and thus does not
28 believe any range of damages is provable against it.

1 d) **Insurance**

2 Plaintiff is not aware of any relevant insurance coverage.

3 Defendants are not aware at this time of any relevant insurance policies.

4 e) **Motions**

5 **Plaintiff's Statement:**

6 While Plaintiff does not at this time anticipate joining additional parties or
7 claims, Plaintiff reserves its right to join additional parties if discovery brings to light
8 facts that would make the joinder of additional parties appropriate, including (without
9 limitation) Defendants' agents, alter egos, or joint ventures involved in the
10 unauthorized distribution of Plaintiff's intellectual property via the Green Dam
11 program, as may come to light during discovery.

12 Plaintiff intends to bring motions for entry of default and default judgment at
13 the appropriate time against any defendants that fail to timely respond to the
14 Complaint after service. For the convenience of the Court, Plaintiff provides the
15 following update regarding the status of service on the Chinese defendants.
16 According to the proof of service filed with the Court by the U.S. Department of State
17 on November 12, 2010, defendant PRC was served on September 27, 2010.
18 Accordingly, the PRC's response date is November 26, 2010. With respect to the four
19 Chinese corporate defendants (*viz.*, Lenovo, Haier, Jinhui and Dazheng), Plaintiff
20 initiated the re-service of these entities pursuant to the Hague Service Convention and
21 in accordance with this Court's September 15, 2010 Order on October 18, 2010.
22 Service on defendant Lenovo was sent through the Hong Kong office, as was
23 suggested by the PRC in its letter refusing to serve Lenovo pursuant to the initial
24 service request. (Plaintiff notes that Lenovo made a general appearance in this action
25 by and through its counsel by filing papers in opposition to Plaintiff's motion for
26 default, which Plaintiff filed in response to the Court's Order to Show Cause.)
27 Plaintiff has not yet received any response to its latest attempts to serve the four
28 Chinese corporate defendants.

1 Defendant Sony Corporation's Statement:

2 Sony Corporation has made it clear to Plaintiff since the inception of this case
3 that Sony Corporation is not a proper defendant and did not engage in any of the
4 activity alleged in Plaintiff's Amended Complaint. Sony Corporation has advised
5 Plaintiff, including through declarations submitted in support of its motion to dismiss
6 for *forum non conveniens*, that Sony Corporation does not distribute any PCs in
7 China, and specifically has not distributed any PCs in China containing Green Dam.
8 Plaintiff has refused to dismiss Sony Corporation and also has refused to provide any
9 information to demonstrate why Plaintiff believes that Sony Corporation is a proper
10 Defendant.

11 In light of the foregoing, Sony Corporation requests that discovery be
12 conducted in phases. Specifically, Sony Corporation proposes that Phase I of
13 discovery address the narrow, threshold issue of whether Sony Corporation is a proper
14 defendant. Sony Corporation anticipates filing an early motion for summary
15 judgment on this threshold issue. Sony Corporation submits that a phased discovery
16 approach would promote judicial economy and efficiency.

17 If it is determined that Sony Corporation is a proper defendant, Sony
18 Corporation anticipates filing a Rule 12(c) motion, as well as a motion for summary
19 judgment on both liability and damages.

20 Defendant BenQ's Statement:

21 BenQ intends to file a motion for summary judgment on the grounds that it is
22 the incorrect BenQ entity to be named in this suit. Additionally, if BenQ remains as a
23 defendant in this case, BenQ plans to file an appropriate dispositive motion
24 challenging this Court's subject matter jurisdiction under the Foreign Sovereign
25 Immunities Act.

26 Defendant Acer's Statement:

27 Acer anticipates that it will file at least a Rule 12(c) motion as well as one or
28 more motions for summary judgment on both liability and damages.

1 Defendant Asus's Statement:

2 Asus anticipates filing a Rule 12(c) motion, as well as a motion for summary
3 judgment on both liability and damages.

4 **f) Manual for Complex Litigation**

5 Plaintiff's Statement:

6 Plaintiff does not believe that the Manual for Complex Litigation should be
7 utilized in this case.

8 Defendant Sony Corporation's Statement:

9 Although Sony Corporation agrees that the Manual for Complex Litigation
10 need not be utilized in this case, Sony Corporation believes that phased discovery
11 should be employed.

12 Defendant BenQ's Statement:

13 BenQ does not believe this case is "complex" within the meaning of the Manual
14 for Complex Litigation, but nonetheless, the Manual's instructions regarding the
15 phasing and management of discovery may be useful here.

16 Defendant Acer's Statement:

17 Acer does not believe this case is "complex" within the meaning of the Manual
18 for Complex Litigation, but nonetheless, the Manual's instructions regarding the
19 phasing and management of discovery may be useful here.

20 Defendant Asus's Statement:

21 Asus does not believe this case is "complex" within the meaning of the Manual
22 for Complex Litigation, but nonetheless, the Manual's instructions regarding the
23 phasing and management of discovery may be useful here.

24 **g) Status of Discovery**

25 At Defendants' request, the parties agreed to forgo service of discovery until
26 after the 16(b) Scheduling Conference or until after a ruling on Sony's pending motion
27 for dismissal on *forum non conveniens* grounds, whichever is earlier. As a result,
28 none of the parties has yet served any discovery in this case.

1 **h) Discovery Plan**

2 **1. Rule 26(f)(3)(A) – Initial Disclosures**

3 At the Rule 26(f) conference, Defendants requested a three-week extension of
4 the deadline for exchanging initial disclosures, which was originally set for November
5 29, 2010, per Fed. R. Civ. P. 26(a)(1)(C). Plaintiff agreed to a two-week extension of
6 this date. Thus, per the parties' agreement, initial disclosures will be made no later
7 than December 13, 2010.

8 **2. Rule 26(f)(3)(B) – Subjects of Discovery**

9 Plaintiff's Statement:

10 Plaintiff proposes a single discovery period wherein the parties may take
11 discovery related to all claims and defenses. Plaintiff believes that structuring
12 discovery in this manner would further the speedy prosecution of the case and would
13 avoid the lengthy delays that would result from Defendants' proposed phased
14 discovery. As stated in Plaintiff's opposition to Sony's *forum non conveniens* motion,
15 Plaintiff does not believe that extensive discovery will be necessary regarding the
16 central issues whether unauthorized copying and distribution of Plaintiff's intellectual
17 property occurred. Plaintiff anticipates that the principal issues in discovery will be:
18 (1) the extent of Defendants' knowledge of, direction of and/or participation in
19 discussions of and decisions relating to the distribution of the Green Dam product
20 (including, without limitation, any efforts by Defendants to police and control the use
21 of their trademarks by their affiliates in connection with infringing products); (2)
22 whether the relationship between Defendants and their agents, affiliates, subsidiaries
23 and joint ventures is such that liability may be imposed for their acts; (3) whether the
24 Defendants entered into a common plan or scheme to distribute the illegal program,
25 which continued after the Defendants had knowledge of the illegal nature of the
26 scheme; and (4) the number of copies that each of the Defendants made or distributed
27 (or otherwise directed or caused to be made or distributed) and the dates and location
28 of these acts.

1 Plaintiff plans to serve written discovery requests upon each of the Defendants
2 regarding each of these issues and such other issues as may be appropriate. Plaintiff
3 also plans to take 30(b)(6) depositions of each of the Defendants. Without waiving
4 any rights to further discovery, Plaintiff does not currently have plans to take further
5 depositions from either Defendants or third parties in connection with this case.

6 Thus, assuming that Defendants cooperate fully in the discovery process,
7 Plaintiff does not believe that extensive overseas discovery will be needed
8 (particularly with respect to third parties) and may not be necessary at all. To the
9 extent that Defendants wish to take discovery or third party discovery overseas, they
10 may do so pursuant to the provisions of the Hague Evidence Convention (of which
11 China, the U.S. and Japan are all signatories) or via letters rogatory with respect to
12 third parties in Taiwan (if any, and none have been identified). Furthermore, Sony's
13 allusion to the information on the State Department's website (both below and in the
14 conference of counsel) has no application provided that Sony (who is of course a party
15 to this action) agrees to cooperate with the discovery process and to produce its own
16 witnesses for deposition without the need for Plaintiff to seek to compel them through
17 the Japanese authorities.

18 Plaintiff proposes the following discovery and trial-related dates (computed in
19 accordance with one of the standard forms used by several Central District judges):

20 **Expert Witness Disclosures:** September 5, 2011

21 **Rebuttal Expert Witness Disclosures:** October 3, 2011

22 **Expert Discovery Cut-Off:** October 24, 2011

23 **Non-Expert Discovery Cut-Off :** September 5, 2011

24 **Cut-Off for Hearing of Motions:** October 17, 2011

25 **Last Day for Hand-Serving Motions in Limine:** October 24, 2011

26 **Pretrial Conference Date:** November 21, 2011

27 **Trial Date:** December 5, 2011

1 Defendants were unprepared to discuss or propose any trial or discovery dates
2 at the Rule 26(f) conference. Defendants did proposed a two-phase discovery process
3 wherein the initial discovery phase would be limited to discovery regarding the
4 whether the Defendants named herein are proper defendants in this action. It is
5 Plaintiff's position that phased discovery here would result in a waste of time and a
6 nearly year-long delay in the litigation. The principal flaw in Defendants' proposal is
7 that the issue of whether the named Defendants are proper defendants herein is
8 inextricably bound up with all of the substantive liability issues in this case. In order
9 to determine this issue, for instance, discovery would be necessary into: (i) what acts
10 were taken by which of the Defendants and which of their related entities; (ii) whether
11 the Defendants themselves authorized, instructed or approved of the complained of
12 acts; (iii) what degree of control the Defendants exercised over their Chinese affiliates
13 and subsidiaries in connection with the complained of acts; and (iv) the factual basis
14 for Plaintiff's allegations that Defendants participated in a conspiracy with defendant
15 PRC and the defendant developers to illegally distribute Plaintiff's software, among
16 other topics. It is unclear what if any topics would be excluded from the first phase of
17 discovery under Defendants' plan. Moreover, it is likely that after the conclusion of
18 Defendants' proposed initial discovery period there will be issues of material fact
19 remaining for the jury to determine regarding the conspiracy claim and other entity
20 liability issues. For all of these reasons, it would be far more efficient to simply take
21 discovery on all topics in a single phase, as Plaintiff has proposed.

22 Defendant Sony Corporation's Statement:

23 Sony Corporation believes it is premature to attempt to set dates for discovery
24 because several defendants have not yet been served, and not all defendants that have
25 been served have appeared.

26 When discovery does proceed, it will be difficult and time consuming because
27 of the complicated legal and factual nature of this case. All of Defendants' witnesses
28 are located outside the United States, and virtually every document located outside the

1 United States will need to be translated. Much of the discovery will be obtained
2 through the Hague Convention or Letters Rogatory. It would be only speculation to
3 estimate how long it will take to complete discovery.

4 In light of this, Plaintiff's proposed discovery schedule would essentially
5 prevent the parties from obtaining key evidence to support their claims or defenses.
6 As just one example, if Sony Corporation is to remain in the case, depositions will
7 need to be taken in Japan. According to the Website of the U.S. Embassy in Japan,
8 "[t]aking a deposition in Japan can be complex; depositions are controlled by detailed
9 agreements between the United States and the Government of Japan, and procedure
10 cannot be modified or circumvented. Orders by U.S. Courts cannot compel the
11 Government of Japan to amend or overlook its judicial regulations and procedures. In
12 addition, the Embassy cannot compel the Government of Japan to act faster, or in a
13 way more convenient or beneficial to any party, even with a Court order requesting
14 such action." According to the Embassy, the first available date for a deposition in
15 Japan is in approximately 6 months (assuming timely visas are obtained).

16 Moreover, witnesses with knowledge of the distribution of Sony computers in
17 China are located in China. Likewise, relevant documents – including any documents
18 reflecting communications between Sony China and the PRC or the distribution and
19 sale of computers in China – are located in China and are written largely in Chinese.
20 Many documents would need to be obtained from third parties via the Hague
21 Convention. Even once the documents have been collected, they will need to be
22 translated and reviewed.

23 In light of this complexity and the threshold issue discussed above, Sony
24 Corporation proposes phased discovery, as follows:

25 First, discovery should be limited to the threshold issue of whether Sony
26 Corporation is a proper defendant. Sony Corporation anticipates filing an early
27 motion for summary judgment on this issue.

1 Second, in the event that Sony Corporation does not prevail on its initial motion
2 for summary judgment, Sony Corporation proposes that the Court hold a further Rule
3 16 conference, wherein hopefully all defendants that have answered and appeared can
4 participate. Although Sony Corporation believes it is premature to set all dates for
5 this case at this time, Sony Corporation believes that when dates are set, the following
6 framework would be helpful.

7 **Phase I Discovery Cut-Off** – November 30, 2011

8 **Phase I MSJ Filing Deadline** – 60 days after close of Phase I discovery

9 **Phase II Discovery Cut Off** – 12 months after ruling on Phase I MSJ

10 **Expert Witness Disclosures** – 90 days before filing of Phase II Dispositive
11 Motions (experts, *inter alia*, on the laws of Japan, China and Taiwan would
12 need to be disclosed and arguably deposed before the MSJ's on those issues are
13 filed)

14 **Deadline for Filing of Phase II Dispositive Motions** – 60 days after close of
15 Phase II Discovery

16 **Pretrial Conference Date** – Four months after hearing on Phase II Dispositive
17 Motions (to ensure time to comply with Rule 16)

18 **Trial Date** – TBD

19 Defendant BenQ's Statement:

20 Discovery should be phased. As noted above, Plaintiff has named the incorrect
21 BenQ entity as a defendant in this suit. Accordingly, discovery as between Plaintiff
22 and BenQ initially should be limited to whether Plaintiff has named the proper BenQ
23 entity as a defendant ("Phase 1 Discovery"). When that discovery is complete, BenQ
24 intends to file a motion for summary judgment on that issue ("BenQ's Phase 1 Motion
25 for Summary Judgment").

26 If BenQ remains in the suit after this Court's order on that motion, only then
27 should merits discovery go forward ("Phase 2 Discovery"). Phase 2 Discovery will
28 require written discovery and depositions of both party and third-party witnesses.

1 BenQ proposes a more extended discovery period than Plaintiff because Phase 2
2 Discovery will be time-consuming and complicated. Plaintiff has alleged claims
3 under Chinese, Japanese, and Taiwanese law. Much, if not most, of the written
4 evidence in this case will be in Chinese or languages other than English, and will
5 require translation. Most of the witnesses will speak Chinese or languages other than
6 English, and are located overseas. The service of discovery and scheduling of
7 depositions in compliance with the discovery laws of People's Republic of China,
8 Japan, and Taiwan, in addition to the United States will be very time-consuming.

9 Although BenQ believes it is premature to set all dates for this case at this time,
10 BenQ believes that when dates are set, the following framework would be helpful:

11 **Phase 1 Discovery Cut-Off:** November 30, 2011

12 **Motion Deadline for BenQ's Phase 1 Motion for Summary Judgment:** 60
13 days after close of Phase 1 discovery

14 **Non-Expert Phase 2 Discovery Deadline:** 12 months after ruling on Phase 1
15 MSJ

16 **Expert Discovery Deadline:** 90 days before filing of Phase 2 Dispositive
17 Motions (experts, *inter alia*, on the laws of Japan, China and Taiwan would
18 need to be disclosed and arguably deposed before the MSJs on those issues are
19 filed)

20 **Phase 2 Dispositive Motion Deadline** – 60 days after close of Phase 2
21 Discovery

22 **Pretrial Conference Date:** Four months after hearing on Phase 2 Dispositive
23 Motions (to ensure time to comply with Rule 16)

24 **Trial Date:** TBD

25 **Defendant Acer's Statement:**

26 Acer believes it is premature to attempt to set dates for discovery because
27 several defendants have not yet been served, and not all defendants that have been
28 served have appeared, including the principal defendants.

1 When discovery does proceed, it will be difficult and time consuming because
2 of the complicated legal and factual nature of this case. Discovery will require written
3 discovery and depositions of both party and third-party witnesses. All of Acer's
4 witnesses are located outside the United States, and virtually every relevant document
5 located outside the United States will need to be translated. Plaintiff has alleged
6 claims under Chinese, Japanese, and Taiwanese law. At this point, it would be only
7 speculation to estimate how long it will take to complete discovery. The service of
8 discovery and scheduling of depositions in compliance with the discovery laws of
9 People's Republic of China, Japan, and Taiwan, in addition to the United States will
10 be time-consuming.

11 Moreover, virtually every witness with knowledge of the distribution of Acer
12 computers in China is located in China. Likewise, relevant documents – including
13 documents reflecting communications regarding the distribution and sale of Acer
14 computers in China – are located in China. These documents would need to be
15 obtained from third parties *via* the Hague Convention. Even once the documents have
16 been collected, they will need to be translated and reviewed.

17 In light of this complexity and the threshold issue discussed above, Acer
18 proposes phased discovery, as follows:

19 First, discovery be limited to the threshold issue of whether the proper entities
20 have been named as defendants in this suit.

21 Second, after the various initial motions for summary judgment are ruled on,
22 Acer proposes that the Court hold a further Rule 16 conference, wherein hopefully all
23 defendants that Plaintiff intends to serve will have answered and appeared, and
24 therefore can participate. Also, at that time the scope of the case and anticipated
25 discovery will be more clear. Although Acer believes it is premature to set all dates
26 for this case at this time, Acer believes that when dates are set, the following
27 framework would be helpful.

28

1 **Phase I Discovery Cut-Off** – November 30, 2011 (allowing time to take
2 foreign depositions)

3 **Phase I MSJ Filing Deadline** – 60 days after close of Phase I discovery

4 **Phase II Discovery Cut Off** – 12 months after ruling on Phase I MSJ

5 **Expert Witness Disclosures** – 90 days before filing of Phase II Dispositive
6 Motions (experts, *inter alia*, on the laws of Japan, China and Taiwan would
7 need to be disclosed and arguably deposed before the MSJ's on those issues are
8 filed)

9 **Deadline for Filing of Phase II Dispositive Motions** – 60 days after close of
10 Phase II Discovery

11 **Pretrial Conference Date** – Four months after hearing on Phase II Dispositive
12 Motions (to ensure time to comply with Rule 16)

13 **Trial Date** – TBD

14 Defendant Asus's Statement:

15 Asus believes it is premature to attempt to set dates for discovery because
16 several defendants have not yet been served, and not all defendants that have been
17 served have appeared.

18 When discovery does proceed, it will be difficult and time consuming because
19 of the complicated legal and factual nature of this case. Discovery will require written
20 discovery and depositions of both party and third-party witnesses. All of Defendants'
21 witnesses are located outside the United States, and virtually every document located
22 outside the United States will need to be translated. Plaintiff has alleged claims under
23 Chinese, Japanese, and Taiwanese law. Much of the discovery will be obtained
24 through the Hague Convention or Letters Rogatory. It would be only speculation to
25 estimate how long it will take to complete discovery. The service of discovery and
26 scheduling of depositions in compliance with the discovery laws of People's Republic
27 of China, Japan, and Taiwan, in addition to the United States will be very time-
28 consuming.

1 **Discovery Cut Off** – 12 months after rulings on Defendants' early motions.
2 **Expert Witness Disclosures** – 90 days before filing of Phase II Dispositive
3 Motions (experts, *inter alia*, on the laws of Japan, China and Taiwan would need to
4 be disclosed and arguably deposed before the MSJ's on those issues are filed).

5 **Deadline for Filing of Dispositive Motions** – 60 days after close of discovery.
6 **Pretrial Conference Date** – Four months after hearing on Dispositive Motions
7 (to ensure time to comply with Rule 16).

8 **Trial:** on a date to be set after an order is issued on Asus's 12(c) motion and
9 the other early motions that other Defendants will be filing.

10 **3. Rule 26(f)(3)(C) – Discovery of Electronically Stored Information**

11 Plaintiff's Statement:
12 Defendants were not prepared to discuss this topic at the Rule 26(f) conference.
13 Defendants could not describe their clients' electronic information storage systems or
14 the form in which such information was stored. Plaintiff asked whether Defendants
15 had instructed their clients to disable any automatic deletion of backup copies from
16 their clients' electronic document storage systems. Defendants refused to confirm
17 either that such auto-purge functions had been disabled on their clients' electronic
18 storage systems or even that they had instructed their clients of their obligations
19 regarding the preservation and spoliation of evidence. (Sony's counsel made only a
20 vague statement that they "would comply with their obligations under the Federal
21 Rules.") This is particularly concerning given that the Defendants are all foreign
22 entities and may not know of or be accustomed to American discovery practices.
23 Indeed, both the formal legal requirements and informal business practices in Taiwan,
24 Japan and China regarding the preservation and spoliation of evidence are notoriously
25 very different those in the U.S.

26 This apparent failure of defense counsel to even instruct their clients regarding
27 the preservation and spoliation of electronic and other evidence more than ten (10)
28 months after the commencement of this case is highly troubling, and could well result

1 in irreparable prejudice to Plaintiff's ability to conduct its case (if relevant evidence
2 has already been destroyed, which, at this point, Plaintiff cannot determine). Plaintiff
3 reserves the right to take any steps necessary to protect its interests in this regard as
4 discovery unfolds. For now, Plaintiff requests the Court to instruct Defendants'
5 counsel of their duties to communicate with their clients regarding their obligations to
6 preserve evidence, particularly electronically stored information, to ensure that
7 relevant information is not lost.

8 Plaintiff acknowledges and has fully complied with its obligations regarding the
9 preservation of electronically stored evidence, including by disabling automatic
10 deletion of backup files.

11 At the 26(f) conference, Plaintiff proposed that the parties produce any
12 electronically stored information in its native form. Defendants had no proposal
13 regarding the production of electronically stored information. Sony's counsel stated
14 that they would have to discuss with their clients how such information is stored
15 before making a proposal about the form in which it should be produced.

16 Defendant Sony Corporation's Statement:

17 Sony is prepared to negotiate and agree upon a separate "Discovery Plan
18 Stipulation" to be submitted to the Court. Sony anticipates that such a Discovery Plan
19 Stipulation would set forth the manner in which electronically stored information is to be
20 produced, as well as address other related issues, such as the right to assert claims
21 of privilege or work product protection after inadvertent production of privileged or
22 protected electronic information.

23 Defendant BenQ's Statement:

24 BenQ acknowledges and has fully complied with its obligations regarding the
25 preservation of electronically stored information ("ESI").

26 Contrary to plaintiff's statement that the "Defendants had no proposal regarding
27 the production of electronically stored information", at the 26(f) conference,
28 defendants proposed that the parties negotiate and agree upon a separate "Discovery

1 Plan Stipulation" to be submitted to the Court along with a Protective Order. BenQ
2 anticipates that such a Discovery Plan Stipulation would set forth the manner in which
3 electronically stored information is to be produced, as well as address other related
4 issues, such as the right to assert claims of privilege or work product protection after
5 inadvertent production of privileged or protected electronic information.

6 BenQ reserves the right with regard to the production of ESI: (1) pursuant to
7 Federal Rule of Civil Procedure 26(b)(2)(B), the right not to provide discovery of ESI
8 that is not reasonably accessible because of undue burden or cost; (2) pursuant to
9 Federal Rule of Civil Procedure 34(b)(2)(E), the right to provide ESI in the form in
10 which it is ordinarily maintained; and (3) pursuant to Federal Rule of Civil Procedure
11 26(b)(5), the right to assert claims of privilege or work product protection after
12 inadvertent production of privileged or protected electronic information.

13 Defendant Acer's Statement:

14 Contrary to plaintiff's statement that the "Defendants had no proposal regarding
15 the production of electronically stored information", at the 26(f) conference, Acer
16 proposed that the parties negotiate and agree upon a separate "Discovery Plan
17 Stipulation" to be submitted to the Court along with a Protective Order. Acer
18 anticipates that such a Discovery Plan Stipulation would set forth the manner in which
19 electronically stored information is to be produced, as well as address other related
20 issues, such as the right to assert claims of privilege or work product protection after
21 inadvertent production of privileged or protected electronic information.

22 Defendant Asus's Statement:

23 Contrary to plaintiff's statement that the "Defendants had no proposal regarding
24 the production of electronically stored information", at the 26(f) conference, co-
25 defendant Acer proposed that the parties negotiate and agree upon a separate
26 "Discovery Plan Stipulation" to be submitted to the Court along with a Protective
27 Order. Asus agrees that such a negotiation process will be necessary and anticipates
28 that such a Discovery Plan Stipulation would set forth the manner in which

1 electronically stored information is to be produced, as well as address other related
2 issues, such as the right to assert claims of privilege or work product protection after
3 inadvertent production of privileged or protected electronic information.

4 Asus acknowledges and has fully complied with its obligations regarding the
5 preservation of electronically stored information ("ESI").

6 **4. Rule 26(f)(3)(D) – Issues Relating to Claims of Privilege or Trial
7 Preparation Material**

8 The parties have agreed that the assertion of a privilege may be made by a party
9 after production, and that previously-produced documents that are subsequently
10 claimed to be privileged will be returned to the parties upon assertion of a privilege,
11 without prejudice to any party's right to challenge the claim of privilege. The parties
12 have agreed to use their best efforts to enter into a mutually acceptable protective
13 order incorporating such a claw-back provision, in accordance with this Court's
14 applicable rules and procedures. Once the protective order has been approved by both
15 parties, the parties will ask the Court to enter the protective order.

16 **5. Rule 26(f)(3)(E) – Limitations on Discovery**

17 Plaintiff's Statement:

18 Much of Defendants' documentary evidence in this case is likely to be in either
19 Japanese or Chinese, and would require translation. As a result, the importance of
20 interrogatories as a method of discovery for Plaintiff is substantially greater here than
21 in ordinary cases. In the interests of efficiency and economy and in order to avoid
22 unnecessary expense and facilitate the gathering of information, Plaintiff requests that
23 the Court permit Plaintiff to serve 75 written interrogatories (which is customary in
24 other federal proceedings, such as trademark proceedings before the U.S. Trademark
25 Trial and Appeal Board, for example), rather than the default 25 interrogatories per
26 Rule 33(a)(1).

27 Apart from this, Plaintiff does not propose any changes to the limitations on
28 discovery under the Federal or Local Rules.

1 Defendant Sony Corporation's Statement:

2 Sony Corporation does not at this time foresee a need to alter the discovery
3 limitations. However, Sony Corporation is concerned that Plaintiff is attempting to
4 artificially limit discovery in this case and prejudice Sony Corporation (and the other
5 foreign manufacturers) by putting unrealistic time constraints on discovery.

6 Defendant BenQ's Statement:

7 BenQ proposes no additional limitations on discovery, other than those set forth
8 above.

9 Defendant Acer's Statement:

10 Acer does not at this time foresee a need to alter the discovery limitations.
11 However, Acer is concerned that Plaintiff is attempting to artificially limit discovery
12 in this case and prejudice Acer (and the other foreign manufacturers) by putting
13 unrealistic time constraints on discovery.

14 Defendant Asus's Statement:

15 Asus proposes no additional limitations on discovery, other than those set forth
16 above.

17 **6. Rule 26(f)(3)(F) – Other Orders**

18 The parties acknowledge that discovery in this action may include confidential
19 or proprietary information. The parties agree to use their best efforts to enter into a
20 mutually acceptable protective order governing the production and use of such
21 information, in accordance with this Court's applicable rules and procedures. Once
22 the protective order has been approved by both parties, the parties will ask the Court
23 to enter the protective order.

24 The parties are not aware of any other orders at this time that would be
25 appropriate for the Court to enter.

26 i) Discovery cut-off

27 Plaintiff proposes September 5, 2011 as the discovery cut-off for this action
28 (see other related dates in section h) above).

1 Sony Corporation proposes a discovery cut off for Phase I of the case of
2 November 30, 2011. Sony Corporation proposes that the other dates not be set until
3 after Phase I is completed.

4 BenQ proposes November 30, 2011 as the discovery cut-off for Phase 1
5 Discovery in this action (see other related dates in section h) above).

6 Acer proposes November 2011 as the discovery cut-off for Phase I of the case
7 (see other related dates in section h) above).

8 Asus proposes that a discovery cut-off be established once the Defendants' early
9 motions are ruled on.

10 **j) Dispositive motions**

11 Both parties anticipate filing dispositive or partially dispositive motions.

12 On September 13, 2010, defendant Sony filed a motion to dismiss the action on
13 grounds of *forum non conveniens*. Defendants Acer, Asus, and BenQ joined in Sony's
14 motion. Sony's motion was originally set for hearing on November 8, 2010; however,
15 by Order of November 4, 2010, the Court took the hearing off calendar, finding the
16 motion fit for disposition without oral argument. On November 18, 2010, the Court
17 issued an order denying this motion.

18 Also on September 13, 2010, defendant Toshiba filed a motion to dismiss the
19 Complaint as to Toshiba for lack of personal jurisdiction. Toshiba also joined in
20 Sony's motion based on *forum non conveniens*. However, Toshiba's motion and
21 joinder became moot, as Toshiba was dismissed from the action pursuant to a
22 settlement agreement reached between Plaintiff and Toshiba, and the corresponding
23 Notice of Dismissal (filed October 11, 2010).

24 Plaintiff's Statement:

25 Plaintiff anticipates filing motions for entry of default and for default judgment
26 against all non-appearing defendants that will have been served, or will have been
27 deemed to have been served by operation of law, prior to trial.

1 Plaintiff anticipates filing a motion or motions for summary judgment or partial
2 summary judgment to establish that: (a) the Green Dam developers' incorporation of
3 elements of the CYBERSitter program into the Green Dam program infringes
4 Plaintiff's rights in the CYBERSitter program; (b) the Defendant computer
5 manufacturers and/or their affiliates or agents engaged in the copying and distribution
6 of the infringing Green Dam program; and (c) the aforementioned copying and
7 distribution of the Green Dam program infringes Plaintiff's rights in the CYBERSitter
8 program. Plaintiff may also file a motion for summary judgment or partial summary
9 judgment that Defendant computer manufacturers are responsible as a matter of law
10 for the infringing acts of their affiliates or agents.

11 Defendant Sony's Statement:

12 Sony Corporation anticipates filing a Phase I MSJ, addressing whether Sony
13 Corporation is a proper party, and a Phase II motion for summary judgment as to all
14 claims on liability and damages. Sony Corporation is also currently considering filing
15 a motion for judgment on the pleadings, if doing so would be a more efficient way of
16 addressing certain of the foreign law issues or other issues that may be decided as a
17 matter of law.

18 Defendant BenQ's Statement:

19 As noted above, Plaintiff has named the incorrect BenQ entity as a defendant in
20 this suit. Accordingly, BenQ intends to file a motion for summary judgment on that
21 issue ("BenQ's Phase 1 Motion for Summary Judgment"). Additionally, if BenQ
22 remains as a defendant in this case, BenQ plans to file an appropriate dispositive
23 motion challenging this Court's subject matter jurisdiction under the Foreign
24 Sovereign Immunities Act.

25 Defendant Acer's Statement:

26 Acer is currently considering filing a motion for judgment on the pleadings.
27 Acer also believes that it will be filing one or more motions for summary judgment to
28 the extent anything remains of the claims as to it after the Rule 12(c) is decided.

1 Defendant Asus's Statement:

2 Asus anticipates filing motion for judgment on the pleadings on failure to state
3 a claim and lack of supplemental jurisdiction.

4 **k) Settlement**

5 Plaintiff's Statement:

6 Prior to the filing of this action, Plaintiff engaged in settlement discussions with
7 some of the named defendants and other potential defendants. After the filing the
8 action, Plaintiff has had further settlement discussions with some of the named
9 defendants. These discussions in some cases included written settlement proposals by
10 Plaintiff to certain of the named defendants and follow-up written and telephonic
11 communications between these parties. As stated in the Notice of Dismissal filed on
12 October 11, 2010, Plaintiff has settled its claims as to Toshiba Corporation
13 ("Toshiba").

14 Pursuant to Local Rule 16-15.4, Plaintiff selects Settlement Procedure No 1,
15 *viz.*, appearance before the district judge for such settlement proceedings as the judge
16 may conduct or direct.

17 Defendant Sony Corporation's Statement:

18 Pursuant to Local Rule 16-15.4, Sony Corporation selects Settlement
19 Procedures No. 1 or No. 3.

20 Defendant BenQ's Statement:

21 No settlement discussions have taken place between BenQ and Plaintiff.

22 Pursuant to Local Rule 16-15.4, BenQ selects Settlement Procedure No 3 ("a
23 non-judicial dispute resolution proceeding"), i.e., private mediation.

24 Defendant Acer's Statement:

25 No settlement discussions have taken place between Acer and Plaintiff.

26 Pursuant to Local Rule 16-15.4, Acer selects Settlement Procedure No 3 ("a
27 non-judicial dispute resolution proceeding"), i.e., private mediation.

28 Defendant Asus's Statement:

1 No settlement discussions have taken place between Asus and Plaintiff.

2 Pursuant to Local Rule 16-15.4, Asus selects Settlement Procedure No 3 ("a
3 non-judicial dispute resolution proceeding"), i.e., private mediation.

4 **I) Trial estimate**

5 Plaintiff's Estimate:

6 Plaintiff estimates that trial will take ten (10) days and will be by jury trial.
7 Plaintiff expects to call 5-7 witnesses. Defendants had no trial estimate or witness
8 estimate at the 26(f) conference.

9 Defendants Sony Corporation's Estimate:

10 Sony Corporation believes Plaintiff's estimate of the trial is unrealistic. It is
11 likely that several expert witnesses will be required to testify, including one expert for
12 each side on Chinese law, Japanese law, and Taiwanese law, technical experts, and
13 damages experts. Additionally, each defendant likely will present 3 or 4 witnesses at
14 trial. It is anticipated that all of Sony Corporation's witnesses will need translators.
15 Accordingly, the trial could (and likely will) last many weeks, if not months.

16 Defendant BenQ's Estimate:

17 Given that claims have been brought under the laws of the United States,
18 People's Republic of China, Japan, and Taiwan, experts on the laws of each of these
19 countries will likely be presented by both sides, and because the vast majority of the
20 witnesses will not speak English, translation of testimony will be necessary, BenQ
21 estimates trial will take 30 days. BenQ has not yet completed its factual investigation,
22 but at this time contemplates calling 4-6 witnesses.

23 Defendant Acer's Estimate:

24 Acer believes Plaintiff's estimate of the trial is unrealistic, and is certainly out of
25 line with the scope of the case according to the allegations of the First Amended
26 Complaint. For example, in the event (albeit unlikely), that the entirety of Plaintiff's
27 allegations remain in this case for trial, it is likely that as many as 10 expert witnesses
28 will be required to testify, including one or more expert for each side on Chinese law,

1 Japanese law, and Taiwanese law, technical experts, and damages experts.
2 Additionally, each defendant likely will present 3 or 4 witnesses at trial. It is
3 anticipated that all of Acer's witnesses (and those of other defendants) will need
4 translators. Accordingly, the trial could last many weeks, if not months.

5 Defendant Asus's Estimate:

6 Asus believes Plaintiff's estimate of the trial is unrealistic. It is likely that as
7 many as 10 expert witnesses will be required to testify, including one expert for each
8 side on Chinese law, Japanese law, and Taiwanese law, technical experts, and
9 damages experts. Additionally, each defendant likely will present 3 or 4 witnesses at
10 trial. It is anticipated that all of Asus's witnesses will need translators. Accordingly,
11 the trial could (and likely will) last many weeks.

12 **m) Trial counsel**

13 Plaintiff's Trial Counsel:

14 Gregory A. Fayer

15 Elliot B. Gipson

16 Sony's Trial Counsel:

17 Karin Pagnanelli and Marc Mayer, Mitchell Silberberg & Knupp, LLP

18 BenQ's Trial Counsel:

19 Paul J. Loh

20 Eileen M. Ahern

21 Acer's Trial Counsel:

22 Robert Dickerson and Alyssa Caridis – Orrick, Herrington & Sutcliffe

23 Asus' Trial Counsel:

24 Karen Boyd and James Beard, Turner Boyd LLP.

25 **n) Independent Expert or Master**

26 Plaintiff's Statement:

27 Plaintiff does not believe the appointment of a special master is necessary in the
28 present case. Plaintiff believes that there may be some incremental benefit to having

1 an independent scientific expert regarding the copying of the CYBERSITTER program
2 into the Green Dam program. However, Plaintiff has limited resources and has
3 already retained its own scientific expert, who performed an analysis of the programs
4 and prepared and submitted a declaration in opposition to Sony's *forum non*
5 *conveniens* motion. In light of this, Plaintiff does not believe that the incremental
6 benefit of having an independent scientific expert would outweigh the cost.

7 Defendant Sony Corporation's Statement:

8 Sony Corporation does not believe this case will turn on technical issues that are
9 so complex that an independent technical expert is necessary.

10 Defendant BenQ's Statement:

11 BenQ does not believe the appointment of a special master or independent
12 expert is necessary in this case.

13 Defendant Acer's Statement:

14 Acer does not believe this case will turn on technical issues that are so complex
15 that an independent technical expert is necessary.

16 Defendant Asus's Statement:

17 Asus does not believe this case will turn on technical issues that are so complex
18 that an independent technical expert is necessary.

19 o) **Other Issues**

20 The parties have addressed these issues above in their respective discovery
21 plans in Section h).

22 DATED: November 22, 2010

GIPSON HOFFMAN & PANCIONE
A Professional Corporation
GREGORY A. FAYER
ELLIOT B. GIPSON

26 By _____ /s/
27 GREGORY A. FAYER
28 Attorneys for Plaintiff CYBERSITTER, LLC
d/b/a Solid Oak Software

1
2 DATED: November 22, 2010
3
4

ORRICK, HERRINGTON & SUTCLIFFE
LLP
ROBERT W. DICKERSON
ALYSSA M. CARIDIS

5 By _____ /s/
6 ROBERT W. DICKERSON
7 Attorneys for Defendant ACER Inc.
8

9 DATED: November 22, 2010
10

TURNER BOYD LLP
KAREN I. BOYD

11 By _____ /s/
12 KAREN I. BOYD
13 Attorneys for Defendant ASUSTeK Computer
14 Inc.
15

16 DATED: November 22, 2010
17

WILLENKEN WILSON LOH & LIEB LLP
PAUL J. LOH

18 By _____ /s/
19 PAUL J. LOH
20 Attorneys for Defendant BenQ Corporation
21
22

23 DATED: November 22, 2010
24

MITCHELL SILBERBERG & KNUPP LLP
KARIN G. PAGNANELLI
MARC E. MAYER

25 By _____ /s/
26 MARC E. MAYER
27 Attorneys for Defendant Sony Corporation
28